INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

No. 936 — Washington, D. C. — May 29, 1943

7(c) EXEMPTION EXTENDED TO OUTSIDE WAREHOUSES

Relief Granted By Administrator Under Condition Goods Were Produced By One Canning Plant

Last January the Administrator of the Wage and Hour Division issued a so-called "clarification" of prior interpretations of Section 7(c) of the Fair Labor Standards Act as it relates to canning operations. That section exempts canners from the maximum hours provisions of the Fair Labor Standards Act for an aggregate period of 14 workweeks in their operations on seasonal or perishable fruits or vegetables. In addition to consolidating a number of earlier rulings, the January release restricted the 7(c) exemption to cannery warehouses located in or attached to the cannery itself. It also ruled that warehouse employees who handled goods from another plant were not exempt and, unless segregated, would destroy the exemption for the entire cannery during the particular workweek. Since reconsideration of this question was desirable, counsel for the Association discussed with Wage and Hour officials the 1943 warehousing problems confronting the industry.

It was pointed out that Conservation Orders M-86 and M-86-a (now Food Distribution Orders 22 to 22.4) had radically changed the distribution pattern for canned foods by requiring canners to set aside and store, for future delivery on government order, a substantial percentage of the total volume of the 1943 pack, and that rationing control of civilian consumption would intensify the warehousing problem. It was indicated that many canners are required to rent storage space wherever available and suitable, and in some instances were utilizing vacant stores and buildings in the vicinity of the cannery. Very often the work performed in these warehouses was a necessary incident to the canning operations and would be exempt if performed in the cannery itself or in an immediately adjacent warehouse. The necessity for hauling canned fruits and vegetables short distances from one cannery to another was likewise explained—to make up a carload, to fill out an order, or to assemble in one warehouse for government inspection the entire quota of canned foods to be set aside under the food distribution orders. It was suggested that canners be permitted to handle up to 25 per cent by volume of goods packed in another cannery without destroying the exempt status of the employees working in the warehouse.

The Wage and Hour Administrator conducted a survey of the industry on the basis of the representations urged by the Association, and, after a delay of many months, issued a further ruling on May 21, 1943. In this he decided that until March 1, 1944, the 7(c) exemption may be extended to employees who work in warehouses located at some distance from the cannery "provided that the only goods stored in the warehouse are those which have been canned in the cannery." Therefore, until March 1, 1944, outside warehouses which store *only* canned foods packed by *one cannery*, may be considered a part of that cannery and the 7(c) exemption applied as though the warehouse were on the cannery

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DECISION EXPECTED SOON ON OPA REORGANIZATION

Need for Early Action Arises From Differences and From Outside Criticism of Agency

Whether and how reorganization is to be effected in the Office of Price Administration had not been officially announced at the time the INFORMATION LETTER went to press. Resignations of some members of the OPA staff during the week were followed by reports of an impending complete reorganization.

The present situation has been brought about both by criticism from outside the agency and by differences between members of the OPA staff on policy. Congressional committees are also investigating OPA policies and operating methods through a series of hearings.

On Monday, May 24, Administrator Brown made a statement that "the articles and rumors to the effect that

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President Names Byrnes Head of New Office of War Mobilization

Purpose of Agency is to Unify Activities of All Government Branches in War Effort

The President announced on May 28 the creation of the Office of War Mobilization under the direction of Justice James F. Byrnes and the appointment of Judge Fred M. Vinson to the post of Director of Economic Stabilization vacated by Justice Brynes.

The general function of the new Office of War Mobilization, as described by the President is "To unify more closely the work of the war agencies concerned with the production, procurement, transportation and distribution of military and civilian supplies, materials and products." Specifically, the executive order establishing OWM states that it shall be the function of OWM, acting in consultation with a committee composed of the Secretary of War, the Secretary of the Navy, the Chairman of the Munitions Assignments Board, the Chairman of the War Production Board, and the Director of Economic Stabilization and subject to the direction and control of the President—

(a) To develop unified programs and to establish policies for the maximum use of the nation's natural and industrial resources for military and civilian needs, for the effective use of the national manpower not in the armed forces, for the maintenance and stabilization of the civilian economy, and for the adjustment of such economy to war needs and conditions;

(b) To unify the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution or transportation of military or civilian supplies, materials, and products and to resolve and determine controversies between such agencies or departments, except those to be resolved by the Director of Economic Stabilization under Section 3, Title IV of Executive Order 9250; and

(c) To issue such directives on policy or operations to the Federal agencies and departments as may be necessary to carry out the programs developed, the policies established, and the decisions made under this Order. It shall be the duty of all such agencies and departments to execute these directives, and to make to the Office of War Mobilization such progress reports as may be required.

The President's announcement further stated that OWM will lay down policies and develop integrated programs and will see that the policies established and programs developed are expedited. "In addition to its regular meetings, the OWM committee members will meet from time to time with me in the Cabinet room," the President stated.

March, 1942, Price Applicable To Resale of Released Food

In response to inquiry, the Office of Price Administration has ruled that sales by a canner of any portion of the 1941 pack repurchased from the Federal surplus Commodities Corporation will be governed by the provisions of the General Maximum Price Regulation, which is still applicable to foods produced during 1941.

Under this regulation the applicable price is the highest price for the particular type, grade, and container size sold or offered for sale and delivery during March, 1942, or if not sold or offered during that month by the canner, then the price of the most closely competitive seller during that month.

This price ceiling will be applicable to such goods as the FSCC invites bids on by the original packer, or by any other person.

DECISION EXPECTED SOON ON OPA REORGANIZATION

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there is to be a great change in personnel and authority are unfounded in fact". Later in the week there were more definite reports of the irreconcilable differences between top members of the OPA staff, with the indication that the situation could be cleared only through further resignations. Well-informed sources reported that Administrator Brown recognized this to be the situation, and that his decision would be made within a short time.

Among resignations recently accepted are those of Charles H. Fleischer, price executive of the Distribution Branch; Edward H. Phelps, acting head of the Distribution Price Section; Atherton Bean of the Flour Section; John K. Westburg, price executive of the Cereals, Grains, and Agricultural Chemicals Branch; George Montgomery, head of the Feed Section; Max Cohn, senior business specialist in the Feed Section. The OPA statement on these resignations said that the resignations of the last four were for reasons not associated with the "present reorganization".

WANTED AND FOR SALE

Machinery–Equipment

This column is open only to members of the Association who want to buy or sell canning machinery and equipment. Names of firms listing the items below will be furnished upon application to the Association. In requesting names, please identify items by number.

WANTED

95-W—Peerless type rotary tomato washer.

FOR SALE

241-S—Cooling tank, 4 x 3½ x 48 feet, with bottom conveyor.

242-S—New Haynie hot water tomato scalder, complete.

243-S—New Sinclair-Scott hydro nested pea grader, equipped for grading four sieves.

California-Arizona Officers

Officers of the California-Arizona Grapefruit Canners' Association are the following: President, George Libbey, Sunset Farms, Peoria, Ariz.; vice-president, W. K. McCracken, Tree-Sweet Products Co., Santa Ana, Calif.; secretary-treasurer, Byron J. Showers, Phoenix, Ariz.

Grower Prices on Apricots

The War Food Administration made the following announcement May 28 on grower prices for 1943 dried and canning apricots:

Average prices established are 32 cents per pound for natural condition dried apricots and $95 per ton, roadside, for canning apricots, or $31 above the average price of 1942. The per ton cost of producing and harvesting the crop this year will be increased greatly over 1942, because of extremely low yields in California.

All of the dried and canned apricots will be purchased by government agencies under reservation orders. Therefore, the increase in price over 1942 will not affect the cost of living. Appropriate price ceilings for processed apricots will be issued by the Office of Price Administration for procurement by government agencies.

The increase in prices for dried and canning apricots is not to be considered a precedent in establishing grower prices for other dried fruits, or fruits for processing. These will be determined on the basis of the prices which growers received in 1942, and will take into consideration increased production and harvesting costs this year, as well as desirable price relationships with other dried fruits.

Even the relatively high prices to be paid by government agencies for canned and dried apricots this season may not fully compensate growers who have lost a large proportion of their crop.

Appeals Machinery Is Established For Manpower Stabilization

Regulation No. 5, Issued by WMC, Includes Employer and Employee Cases Under 48-Hour Week

Machinery for appeals by employees and employers from any War Manpower Commission action under employment stabilization plans, the 48-hour week policy and other manpower regulations, was set up May 23 by War Manpower Commission Chairman Paul V. McNutt with the promulgation of Regulation No. 5.

The new regulation prescribes who may appeal, actions from which workers may appeal, actions from which employers may appeal, notification of the right to appeal and officials or committees to whom appeals are originally taken. After decisions on original appeals, further appeals to the Regional Management-Labor War Manpower Committees and to the Chairman are possible. Text of Regulation No. 5 follows:

§ 906.1. *Who may appeal.*

The worker or employer with respect to whom the War Manpower Commission takes any action described in Sections 906.2 or 906.3 of this regulation may appeal from such action. Other workers or employers, groups or organizations of workers or employers, and other persons or organizations who claim to be prejudiced by any action taken by the War Manpower Commission may request a hearing upon such action and such hearing may be afforded in the discretion of the War Manpower Commission representative to whom the request is directed.

§ 906.2. *Actions from which workers may appeal.*

A worker shall have the right to appeal whenever the War Manpower Commission—

(a) refuses to refer him to, or to consent to his being hired for, employment in which, under an applicable War Manpower Commission order, regulation or other direction, he may be hired only upon referral by, or with the consent of, the War Manpower Commission; or

(b) refuses to issue to him a statement of availability; or

(c) requires or permits his employer to release him under a War Manpower Commission policy, regulation or other direction; or

(d) determines that he is violating, or has violated any provision of any order, regulation, or other direction of the War Manpower Commission.

§ 906.3. *Actions from which employers may appeal.*

An employer shall have the right to appeal whenever the War Manpower Commission—

(a) refuses to refer to him, or to consent to his hiring, a worker or workers if, under an applicable War Manpower Commission order, regulation or other direction, he may hire such worker or workers only upon referral by, or with the consent of the War Manpower Commission; or

(b) issues a statement of availability to any of his workers; or

(c) requires him to release, or refuses to permit him to release, any workers; or

(d) requires him to extend the workweek of any of his workers;

(e) determines that he is violating, or has violated any provisions of any order, regulation, or other direction of the War Manpower Commission.

§ 906.4. *Notification of right to appeal.*

Any employer or worker who has a right to appeal from an action of the War Manpower Commission as provided in Sections 906.2 and 906.3 of this regulation, shall be fully apprised of his appeal rights and, upon request, shall be given a written statement setting forth the action in question.

§ 906.5. *To whom appeals originally taken.*

(a) In areas for which an Area Manpower Director and an Area Management-Labor War Manpower Committee have been appointed, appeals shall be taken to such Committee and hearings shall be afforded before such Committee, or, at the discretion of that Committee, before an Area Appeals Committee composed of an equal number of representatives of management and labor (including representatives of agricultural management and labor when agricultural employment is involved), selected by the Area Manpower Director from a panel chosen by the Area Management-Labor War Manpower Committee. The Area Manpower Director, or his designated representative, shall serve as the non-voting chairman of the Area Management-Labor War Manpower Committee in appeals hearings and of Area Appeals Committees.

(b) In areas for which an Area Manpower Director and an Area Management-Labor War Manpower Committee have not been appointed, appeals shall be taken to, and hearings shall be afforded before, an Area Appeals Committee in the locality composed of an equal number of representatives of management and labor selected by the Regional Manpower Director from a panel chosen by the Regional Management-Labor War Manpower Committee. A representative designated by the Regional Manpower Director shall serve as the non-voting chairman of the Area Appeals Committee.

(c) All hearings on original and subsequent appeals shall be conducted informally and in a manner that will best develop the facts.

§ 906.6. *Decisions on original appeal.*

(a) The decision on an original appeal shall be made by the Area Appeals Committee or the Area Management-Labor War Manpower Committee on the basis of evidence adduced at the hearing. The decision by a majority of the Committee shall be final unless the appellant wishes to appeal further, or unless the Area Manpower Director or other representative of the War Manpower Commission requests that the appeal be heard at the Regional level. In the event of a tie vote, the appeal shall be heard at the Regional level. Members of the Committee may file majority and minority reports.

(b) An Area Management-Labor War Manpower Committee at any time after the assignment of a case to an Area Appeals Committee and prior to the expiration of the appeal period and prior to the filing of a further appeal to the Regional Management-Labor War Manpower Committee, may take jurisdiction of, hear and render a decision, which shall supersede any decision rendered by an Area Appeals Committee, or any case assigned by that Committee to an Area Appeals Committee.

§ 906.7. *Hearings before and decisions by Regional Management-Labor War Manpower Committees.*

(a) Further appeal from decisions on original appeals shall be taken to the appropriate Regional Management-Labor War Manpower Committee and hearings shall be afforded before such Committee, or, at the discretion of that Committee, before a Regional Appeals Committee composed of equal representatives of management and labor selected by the Regional Manpower Director from a panel chosen by the Regional Management-Labor War Manpower Committee. Such Committees may render a decision on the basis of the record in the case, or may schedule a further hearing to be held before the Committee if in the judgment of the Committee such further hearing is necessary. The Regional Manpower Director, or his designated representative, shall serve as the non-voting chairman of the Regional Management-Labor War Manpower Committee in appeals hearings and of Regional Appeals Committees. A decision shall be rendered and further appeal permitted as provided in Section 906.6 (a) above.

(b) A regional Management-Labor War Manpower Committee may at any time after the assignment of a case to a Regional Appeals Committee and prior to the expiration of the appeal period and before the Chairman of the War Manpower Commission has taken jurisdiction over a case, hear and render a decision, which shall supersede any decision rendered by a Regional Appeals Committee, on any case assigned by that Committee to a Regional Appeals Committee.

§ 906.8. *Appeal to the Chairman of the War Manpower Commission.*

At the direction of the Chairman of the War Manpower Commission, he may take jurisdiction over any appeal and render a final decision on that appeal. The Chairman of the War Manpower Commission shall render a final decision on all cases appealed from a decision of a Regional Appeals Committee or of a Regional Management-Labor War Manpower Committee. The Chairman of the War Manpower Commission in rendering a decision shall consider the record in the case and recommendations submitted by the Management-Labor Policy Committee.

§ 906.9. *General provisions.*

(a) *Appeals periods.* All appeals must be taken within such periods of time (but such period shall be at least three days) following the date of the decision appealed from as the Regional Manpower Director may prescribe. The appeal period for appeals to the Chairman of the War Manpower Commission shall be the ten day period following the rendition of the decision appealed from.

(b) *Notice of hearings and decisions.* The appellant shall be given reasonable notice of the time and place of any hearing upon his appeal and shall be promptly apprised of the decision.

(c) *Right to representation.* Any action which any person or organization may take under this regulation may be taken on his behalf by his duly authorized representative.

(d) *Consolidation of appeals.* Whenever appropriate for the full and expeditious determination of common questions raised by two or more appeals, the Chairman of the Committee to whom such appeals are taken may consolidate them.

(e) *Effect of appeal on action appealed from.* Whenever the War Manpower Commission issues a statement of availability to any worker or permits or requires an employer to release a worker, the appeal of the worker or employer, respectively, shall in no way stay the action as to the worker or employer satisfied with the action, but the officer to whom the appeal is taken may direct that subsequent cases involving other workers of the employer and raising identical issues be suspended pending final settlement of such issues. In all other cases the taking of an appeal shall stay the action appealed

from, unless the Chairman of the Committee to whom the appeal is taken specifically directs otherwise.

(f) *Inapplicability to Selective Service appeals.* Nothing in this regulation shall be construed as applicable to action taken under the Selective Service and Training Act of 1940, as amended, or Executive Order No. 9309, or to transfers between Executive departments or agencies of the Federal Government under Executive Order No. 9243.

(g) *War Manpower Commission.* The term "War Manpower Commission" includes any officer, employee, agent or agency designated by the War Manpower Commission.

(h) *Modification of other policies.* The provisions of any prior War Manpower Commission policy, regulation or other direction, to the extent that they are inconsistent with this regulation, are hereby modified to conform with the provisions of this regulation.

Postal District Numbers

The form included with this issue of the INFORMATION LETTER is designed to obtain the new postal district numbers recently assigned to expedite mail deliveries. Information regarding these district numbers will be used to revise the Association's mailing list and thus aid in speedier delivery of mail from N. C. A. headquarters, including THE LETTER. Prompt return of the form, with the district number inserted, will be appreciated.

New Assignment for Townsend

Appointment of M. Clifford Townsend as special representative of the War Food Administrator in contacts with the governors of States and the State commissioners and secretaries of agriculture was announced May 25 by Administrator Chester C. Davis. Mr. Townsend leaves the post of Director of the Food Production Administration to take the new duties.

As special representative of the Administrator, Mr. Townsend will have particular responsibility for relations with the States in connection with new activities and functions of WFA. He will lead negotiations with the governors and State commissioners and secretaries of agriculture on these matters. He also will confer with representatives of county officials in order to achieve maximum cooperation in the new work of WFA. He will present the viewpoints of State and local officials for the guidance of the Administrator and will formulate policies governing relationships with such officials.

Acute Labor Shortage Areas

Nine communities have been added to the War Manpower Commission's list of labor shortage areas, but two have been removed from that classification, according to a May 24 release. Transferred to Group I (areas of acute labor shortage) are the following:

Akron, Ohio; Chambersburg, Pennsylvania; Pine Bluff, Arkansas; Salt Lake City, Utah; San Francisco, California; Sturgeon Bay, Wisconsin; Trenton, New Jersey; Wilmington, Delaware; Jacksonville, Florida.

Des Moines, Iowa, and Manitowoc, Wisconsin, have been transferred from Group I to Group II (areas of labor stringency or in which a labor shortage may be anticipated within six months).

Quota of Home Canning Sugar Is Reduced by OPA Amendment

The amount of sugar which consumers may obtain for home processing and preserving is reduced under Amendment 63 to Ration Order No. 3. Amendment 59 to this order, reviewed in the INFORMATION LETTER for May 15, permitted consumers to obtain a total of 250 pounds per family unit from the period March 1, 1943, to February 29, 1944, inclusive. The new amendment states that Stamps 15 and 16 in Ration Book 1 may be used by a consumer to obtain, on or before October 31, 1943, an amount not to exceed five pounds per each stamp. "However, in no event shall a consumer use either such stamp to obtain sugar in an amount which, when added to the amount of sugar otherwise obtained by such consumer for such purposes between March 1, 1943, and February 29, 1944, inclusive, would exceed 25 pounds," it is stated.

Applications for sugar needed for home canning and preserving in addition to that which may be obtained on or before October 31, 1943, by the use of these stamps, must be made in writing to the consumer's local board, and must be accompanied by the ration books issued to the persons on whose behalf the application is made. The application also must state the number of quarts or pounds of processed foods the applicant and the members of his family unit (for whom application is made) have produced since March 1, 1943, or intend to produce from fresh fruits, and other pertinent information. The board may issue a certificate or coupons to the consumer, but the weight value shall in no event exceed 15 pounds, since the consumer will be able to obtain ten pounds of sugar for the purposes covered by this section by the use of Stamps 15 and 16.

ACQUIRING PROCESSED FOOD

Amendments Cover Acquisition of Items Produced at Other Sources

Under Amendment 30 to Ration Order 13, which became effective May 27, a processor may acquire for sale or transfer a limited quantity of food produced or imported by someone else without registering as a wholesaler or a retailer and without special application to the Office of Price Administration. Acquisitions permitted in any one calendar year under this amendment are limited to 10 per cent of the processor's own production during the preceding year. A processor may not acquire more than this amount for sale or transfer, except by special application to and approval by the OPA.

Processors who regularly wish to purchase foods produced or imported by others will use points they have on hand from sales they have made, instead of applying to Washington for points to make such purchases.

If a person gets processed foods from someone else, to use them in producing other processed foods for sale or transfer, the place he keeps them is a processor establishment.

Amendment 31 to RO 13 states that a place at which a person produced or imports processed foods only for his own use and not for sale or transfer, is not a processor establishment. Also, a place does not become a processor establishment because a person produces home processed foods there, even if he produces them for sale or transfer.

Report of Tuna Receipts

Receipts of tuna at Southern California ports for the first four months of 1943 were more than double the amount received during the same period of 1942, Coordinator of Fisheries Harold L. Ickes has announced. Landings of 15,205,245 pounds were recorded this year as against 7,482,414 last year, it was reported.

Tuna species which showed the greatest amount of increase were striped, yellowfin, and bluefin.

The following table presents the pounds of tuna received at Southern California ports January 1 through April 30:

Species	1943 *Pounds*	1942 *Pounds*
Albacore	123,099	15,547
Bonito	149,337	203,412
Tuna, bluefin	702,645	5,185
Tuna, striped (skipjack)	4,078,329	939,243
Tuna, yellowfin	10,126,963	6,070,480
Yellowtail	24,872	248,547
Total	15,205,245	7,482,414

Use of Alternative Basis for Wage Adjustments Authorized

The National War Labor Board, in a telegram to the Regional War Labor Boards, has advised them that where it is impracticable to use the procedure for wage adjustment set out in Paragraph I of the May 11 directive of the Office of Economic Stabilization, they can follow the procedure prescribed in the directive of May 12. Both of these directives were reproduced in the INFORMATION LETTER for May 15.

The directive of May 11 used the rate of pay of common labor in agriculture as the base for adjustment of pay for common labor in the processing industries. The May 12 directive provides that adjustments can be made on the basis of going rates, by occupational groups and labor market areas. The text of the telegram to the Regional Boards follows:

"In cases where Regional War Labor Board does not find it practicable, on the basis of paragraph one of the Economic Stabilization Director's directive of May 11, 1943, to adjust the rates of hourly-paid common labor engaged in the packing or processing of seasonal or perishable food and feed products, said rates may be adjusted by reference to the minimum of the common labor wage rate brackets in the manner provided in the Director's subsequently issued directive of May 12, 1943, with the understanding that such brackets will actually be established in each case acted on. In such case, paragraphs 2 and 3 of the previously issued directive should be applied as fully as if the provisions of paragraph 1 had been actually utilized."

Self-pricing of New Products

Manufacturers were authorized by the Office of Price Administration, in Amendment No. 54 to General Maximum Price Regulation, issued May 24, to set their own prices for new products (not priced under any other order) and not sold by them or by competitors during March, 1942. The canner need not, in such cases, ask the Washington office of OPA to set the price as has been required in the past.

Self-determined prices, arrived at by use of a simple formula, are to be reported to the nearest OPA field office within 10 days of their determination and are the sellers' maximum prices. This amendment, which contains the formula for establishing prices of new products, may be obtained from the field offices of the OPA.

Provision also has been made for manufacturers to apply for a price at a field office instead of the national office, where the formula cannot be applied. The OPA action does not apply to products covered under other regulations or to products for which a pricing method already has been fixed by OPA.

Salmon Offer Forms Mailed

Offer forms for the purchase of all government requirements of canned salmon packed in the continental United States were mailed to canners May 25 by the Food Distribution Administration. Offers may be submitted any time prior to July 15, to the Fish Products Division, Special Commodities Branch, Food Distribution Administration. Information concerning types of boxes, labeling, grades, shipping, etc. is contained in the announcement and the offer of sale.

Alaska Fishery Regulations

The Fish and Wildlife Service of the Department of the Interior has issued miscellaneous amendments to the Alaska Fisheries General Regulations, details of which were published in the Federal Register for May 25, 1943.

Schedule of Fruit Meetings

The Office of Price Administration's West Coast canned fruit meetings will be held at Portland, Oregon, on June 10 in the Multnomah Hotel and at San Francisco, California, in the Gold Room of the Fairmount Hotel. A meeting with the dried fruit industry is scheduled for June 14 in the Red Room of the Fairmount Hotel in San Francisco.

These meetings will be attended by Melville Ehrlich and W. S. Breton of OPA and will start at 10 a. m. Mr. Ehrlich also will attend the Michigan Canners Association spring meeting at Traverse City, June 6 and 7.

A. R. Dunbar Dies

A. R. Dunbar, president of the Old Grimes Canning Co., Grimes, Iowa, and member of the Board of the Directors of the Association, died May 25, after having suffered a stroke at Kansas City.

Mr. Dunbar, who was elected Director for a three-year term at the last annual meeting of the Association, formerly had served in the same capacity from 1936 through 1938. During the latter year he also held the office of president of the Iowa-Nebraska Canners Association.

Fresh or Frozen Products Exempt from Renegotiation

Under the discretionary authority contained in Section (1)(2)(ii) of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, the Secretary of War has exempted from renegotiation all contracts and subcontracts whether heretofore or hereafter made or performed, for the commodities named in the following paragraph:

"(2) Contracts and subcontracts for any of the following commodities: Fresh or frozen fruits; fresh or frozen vegetables; butter (except canned); cheese (except processed canned); ice cream; fresh fluid milk; fresh fluid cream; poultry (except canned); fresh, smoked or processed meats, and offals (except canned); lard and lard substitutes; fresh, frozen, salted or smoked fish and sea foods (except canned); bread and other bakery products; potato chips; compressed yeast; shell eggs; margarine; and any other perishable foods which the Quartermaster General may specify from time to time. The Quartermaster General is authorized to interpret this exemption and to determine the commodities within its terms, and to amend such interpretations and determinations."

Section (1)(2)(ii), under the authority of which the above exemption was granted, permits the Secretary to exempt any contract or subcontract when he believes the profits can be determined with reasonable certainty when the contract price is established.

Committee Hearings Called

Two special House committees investigating Office of Price Administration policies and regulations will receive testimony from canner witnesses during the week commencing May 31. The Smith Committee has requested witnesses from the canning industry to again appear and detail their difficulties with all phases of OPA regulatory measures. At the time the INFORMATION LETTER went to press it was not known who will appear before the Smith Committee. The hearing is set for June 1.

During the same week—the exact date has not been set—the special House Interstate and Foreign Commerce subcommittee will continue its investigation of OPA's grading and labeling requirements. The subcommittee, authorized by the Halleck resolution and under the Chairmanship of Lyle N. Boren, will hear witnesses representing the Grocery Manufacturers Association, followed by testimony of the canning industry.

Association to Renew Application for Industry Exemption From the Seventh-Day Double-Time Provision of Executive Order 9240

About a month ago the Association filed with Secretary of Labor Frances Perkins an application on behalf of the canning industry for exemption from the requirement of Executive Order 9240 that double time be paid for each seventh consecutive day's work. It will be recalled that after some initial confusion, the Secretary of Labor ruled that this order was applicable to canners engaged in packing seasonal or perishable fruits and vegetables and fish, even though such operations were exempt under Section 7 of the Wage and Hour Law. (See the INFORMATION LETTER for March 6, page 7534.) The Association's application for exemption pointed out that the purpose of the Executive Order was to impose the penalty of double time for the seventh consecutive day's work on employers who were able to control the nature, time, and extent of their operations; and developed in detail the reasons why this was not possible in the canning industry.

Recently, the Secretary of Labor denied this application, stating:

> "Apart from situations where a government-approved wage stabilization agreement is operating satisfactorily, it is not contemplated by Executive Order 9248 that exemptions will be granted from Executive Order 9240 except in most unusual circumstances. Upon consideration of your application there appears to be no basis for granting an exemption, and accordingly your application is denied."

Inasmuch as this matter is of great importance to the industry, discussions are now underway looking to a renewal of the application, possibly with separate new applications covering the canning of particular commodities. In the meantime, the attention of all canners is called to the fact that compliance with this order will mean that on all seventh-day operations *double time* must be paid.

SEA HERRING PRICES SET

Alewives Also Covered in OPA Dollars and Cents Ceiling Regulation

Dollars and cents maximum prices per case, at the canner level, for Atlantic sea herring and alewives have been set by the Office of Price Administration, effective May 29, under the terms of Maximum Price Regulation No. 396. Article 1, Section 1 (a) states that

"the prices set forth below are maximum prices f.o.b. the shipping point nearest the canner's warehouse. The maximum prices are gross prices and the seller shall deduct therefrom his customary allowances, discounts and differentials to purchases of different classes.

Description		Maximum price per case	
Container size and type	Style of pack	Sales to government purchasing agencies	Sales to others
No. 300 can	Plain	$5.40	$5.75
No. 300 can	Tomato sauce	5.75	6.10

"(b) For container sizes and style of pack of canned Atlantic sea herring and alewives not listed in paragraph (a) the price shall be the price determined by the Office of Price Administration to be in line with the prices listed in paragraph (a). Such determination shall be made upon written request, addressed to the Office of Price Administration, Washington, D. C., and accompanied by sworn statements showing costs and usual differentials.

Following is another governing section of the order:

"SEC. 2.—*Sales of canned Atlantic sea herring and alewives at higher than maximum prices prohibited.* (a) On or after May 29, 1943, regardless of any contract, agreement, or other obligation, no canner shall sell or deliver any Atlantic sea herring or alewives and no person in the course of trade or business shall buy or receive any Atlantic sea herring or alewives at prices higher than the maximum prices established by this regulation, and no person shall agree, offer, solicit, or attempt to do any of these things.

"(b) Prices lower than the maximum prices, may, of course, be charged and paid."

This regulation does not apply "to sales or deliveries of canned Atlantic sea herring or alewives to a purchaser, if prior to May 29, 1943, such canned Atlantic sea herring or alewives have been received by a carrier other than a carrier owned or controlled by the seller, for shipment to such purchaser."

California Sardine Officers

Officers of the California Sardine Products Institute are the following: President, I. M. Isaacs, Fish Packers Inc., San Francisco; vice presidents, William C. Moorehead, Santa Inez Fisheries, and W. F. Wood, Southern California Fish Co., Terminal Island; secretary, Eugene Giacomino, Italian Food Co., Long Beach; treasurer, M. R. Flause, Monterey Canning Co., Monterey; manager, David M. Oliver, San Francisco.

Stitching of *Letter* Banned By Conservation Order

In accordance with Limitation Order L-291 issued by the War Production Board, effective May 25, the INFORMATION LETTER will hereafter not be wire stitched except when it exceeds 12 pages in size. Order L-291 prohibits the use of wire stitching on printed matter having a content of 12 pages or less. Copies of the LETTER when not wire stitched are more easily disarranged or misplaced and those who desire to maintain permanent files will find ring binders probably the most satisfactory method of maintaining their files. All issues of the LETTER are punched to facilitate filing in standard size three-ring binders, which should be available in local stationery stores. The Association has some binders in stock which will be furnished at $1.00 postpaid.

OWI Publicizes Need For Labor In 1943 Canning Operations

Two important newspaper releases, recently prepared by the Office of War Information, spell out clearly to the public the need for volunteer labor in food canning and other processing plants in order to handle the 1943 packs, and replace the manpower shortage caused by loss of personnel to other war industries and through the draft.

The first of these releases made the front pages of leading newspapers throughout the country on May 26. It pointed to the danger of waste and loss of food if labor is not available to carry it through into processed form, and reported a War Manpower Commission estimate that 400,000 workers will be needed at the peak season this year. The article reviewed the efforts made by various government agencies, as well as by the industry itself, to prepare for this emergency situation through recruitment of local volunteer help.

A second release, scheduled for the Sunday papers of May 30 described the type of work performed in processing plants and pointed to similarities in some cases with the housewife's familiar routine in the sorting and preparation of food products in her kitchen. The intent of this article was to familiarize the public with the character of work in the canneries and other plants, to stress again the importance of food production to the war effort and to call for volunteer help.

7(c) EXEMPTION EXTENDED TO OUTSIDE WAREHOUSES

(Continued from page 7677)

premises. The 7(c) exemption may not under this ruling be taken for employees working in a so-called "consolidation," or a centrally located, warehouse which serves two or more canneries, even though the employees work only on the goods packed by their employer's cannery.

In his new ruling, however, the Administrator denied the Association's request that the incidental handling of products canned at another plant be permitted during a 7(c) week, and consequently the unlimited workweek exemption may not be taken for employees in any warehouse where goods from another warehouse are handled. As indicated below, if such employees can be segregated, the 7(b)(3) or 56-hour exemption may be taken during the workweek for them, but under its rulings the Division will count this as one of the 14 exempt weeks under Section 7(b)(3) for the entire cannery.

The text of the Administrator's letter containing the ruling on warehouses located away from the cannery follows:

ADMINISTRATOR'S LETTER

"The members of my staff with whom you conferred on March 16, 1943, have given me a complete statement of the questions which you raised with regard to our interpretation of section 7(c) of the Fair Labor Standards Act as it affects the emergency storage problem arising out of War Department restrictions and OPA regulations.

"As you know, a representative of this Division made a survey of the storage problem following your visit to this office. I have given careful consideration to the facts disclosed by this survey. On the basis of the available information it appears that War Department orders and OPA regulations have made it necessary for canners to keep on hand a large percentage of last year's pack of canned goods. This situation has created a shortage of storage space and has compelled the canners to rent temporary space in such places as barns, vacant houses, and other buildings not normally used for storage purposes. Such temporary storage places are frequently located at some distance from the canning plant and consequently employees who handle the canned goods at these places, or who perform in these temporary warehouses such operations as labeling, boxing, or stamping on goods carried over from last year's pack do not qualify for the section 7(c) exemption under the interpretation contained in our recent release R-1892.

"The government restrictions and regulations which compelled the canners to carry over a large part of the pack from the previous year were promulgated while the previous interpretation of section 7(c) was still in effect. The modified interpretation contained in release R-1892 was not intended to operate in such a way as to compel the payment of overtime to employees who would be exempt were it not for the emergency situation arising out of conditions imposed by the Government. Consequently I will postpone until March 1, 1944, the enforcement of that portion of the interpretation contained in release R-1892 which holds that a warehouse which is not part of the cannery premises is not the 'place of employment' where canning is carried on. Thus, until March 1, 1944, we will continue to consider as exempt under section 7(c) those employees who perform in the plant warehouse of a fresh fruit and vegetable cannery operations which would be exempt if performed in the cannery, provided that the only goods stored in the warehouse are those that have been canned in that cannery.

"You also requested that a ruling be made permitting the incidental handling of all products which were canned in another establishment. It is my opinion that such a ruling would be inconsistent with the decisions of the courts and the intent of the Act. The information which I have available, moreover, indicates that such 'incidental handling' occurs only in isolated cases and does not constitute a serious problem for the industry as a whole."

CONSOLIDATION OF PREVIOUS RULINGS

In addition to changes in the status of warehouse employees (now temporarily postponed) the so-called clarification sets forth the present understanding of the Division as to the application of the 7(c) exemption to all cannery workers. It does not affect or limit in any way the existing interpretations under Section 7(b)(3), which affords an exemption up to 56 hours a week and 12 hours a day during an additional 14 weeks. This 7(b)(3) exemption covers *all* employees working on seasonal or perishable products *irrespective of the place of employment*. The result is that the 7(b)(3) exemption is now broader in terms of employees covered than is the 7(c), or 14 unlimited workweek, exemption.

In order that canners may have a permanent record of the full release on Section 7(c), it is reproduced below with certain explanatory comments.

"OVERTIME EXEMPTIONS FOR PROCESSING OF AGRICULTURAL COMMODITIES

"A clarification of the interpretations of the exemptions from the hours provisions of the Fair Labor Standards Act provided by section 7(c) of the Act was issued January 25, 1943, by L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor. The clarification deals with the Division's position on processing of agricultural commodities. It is the result of certain judicial decisions and the Division's experience with economic and administrative problems relating to these exemptions, and is intended to effectuate more completely the intent of Congress as evidenced by the terms of the statute.

"Mr. Walling stated that any revised interpretations contained in the clarification which involve a narrowing of the exemption would not be adopted for enforcement purposes until March 1, 1943. This will give the industries affected an opportunity to appraise the effect of the changes, and to plan any modification of their operating methods which they may deem appropriate, without the risk of governmental action based upon failure to comply with the Division's interpretations as revised. He also pointed out, however, that his enforcement policy could not of course bar the right of employees to maintain independent suits under section 16(b) of the Act.

"Section 7(c) provides that 'in the case of an employer engaged' in certain described operations on seasonal agricultural commodities, the overtime provisions of the Act 'shall not apply to his employees in any place of employment where he is so engaged.' The exemption extends throughout the year for some types of operations, but is limited to 14 workweeks annually for others.

"A. EMPLOYEES WHO ARE EXEMPT

"In the case of *Fleming v. Swift & Co.*, 41 F. Supp. 825 (N. D. Ill.), the Court held that the exemption provided by section 7(c) for 'handling, slaughtering, or dressing . . . livestock' is applicable to those employees who are actually engaged in such operations, and, in addition, to 'any employee whose employment, during any workweek is wholly within the place of employment, as herein defined, and who during that workweek is working exclusively in an occupation which is a necessary part of the handling, slaughtering or dressing of livestock.' 'Place of employment' was defined as 'those portions of the plant devoted by the employer to the handling, slaughtering or dressing of livestock.'"

COMMENT: This paragraph contains the legal basis relied upon by the Administrator to sustain his interpretation as to the manner in which Section 7(c) should be applied to processing operations. The Court's definition of "place of employment" underlies the Division's decision to exclude all ware-

houses which are not contiguous to the cannery proper from the benefits of Section 7(c). (This part is now postponed until March 1, 1944.)

"Since all of the exemptions provided by section 7(c) are phrased in the same general language and since they are all applicable to the packing or processing of seasonal agricultural commodities, the Administrator has concluded that the holding of the Court quoted above not only applies to the handling, slaughtering, or dressing of livestock, but also to all of the other section 7(c) exemptions. It is therefore his opinion that the section 7 (c) exemptions are applicable to the following two groups of employees: (1) those who actually perform the operations described in the section, and (2) those employees whose occupations are a necessary incident to the described operations, and who work solely in those portions of the premises devoted by their employer to the described operations. Only those employees who come within one or the other of these two categories are exempt."

COMMENT: This paragraph reaffirms existing interpretations with respect to a cannery which is engaged in canning both seasonal and non-seasonal fruits and vegetables, and all employees in such a plant who perform the actual canning or freezing operations and engage in activities which are incidental thereto, may be granted the exemption. Employees engaged in canning seasonal commodities may be segregated from those canning non-seasonal products in the same cannery in order to secure the exemption for the former group and to satisfy this new interpretation.

In his interpretation of July, 1941, the Administrator laid down the rule that all employees at *stations* where *receiving*, *vining*, barreling, grading, ripening or precooling operations are performed prior to the movement of the fruits and vegetables to the canning or freezing plant proper, are exempt under Section 7(c). This interpretation has been affirmed by the Administrator. As reported in the INFORMATION LETTER for May 1, 1943, page 7631, the Wage and Hour Division has ruled that "the vining of peas, as customarily performed, is so closely connected with canning as to be considered a part thereof. Therefore, employees engaged in vining peas may be deemed to be engaged in 'canning' as that term is defined in Section 7(c) of the Act."

The 7(b)(3) exemption is likewise available to both portable and attached vining stations, but both exemptions must be taken for the same workweek that the cannery is taking the 7(c) or 7(b)(3) exemption.

The application of the 7(c) week has been narrowed with respect to *field men*. If a field man is contracting acreage, he may take a 7(b)(3) week if his cannery is likewise taking a 7(b)(3) week, but he may not take the 7(c) week. (The Administrator's interpretation of July, 1941, permitted such field men to come within the 7(c) exemption.) If, however, the field man is visiting the farmer for the purpose of advising him concerning the growing and cultivating of the crops, he may be classified during such workweeks as an "employee engaged in agriculture" and therefore exempt under Section 13(a)(6). If the field man is buying the raw products on the open market, he is not engaged in agriculture nor is he entitled to a 7(c) week, but he may take the 7(b)(3) exemption.

Office employees are exempt under Sections 7(b)(3) and 7(c) if the plant is engaged solely in canning seasonal or perishable fresh fruits and vegetables. If the cannery is engaged in canning both seasonal and non-seasonal commodities only those office employees whose work relates *solely* to the seasonal commodities may be exempted under both 7(b)(3) and 7(c).

With respect to *power house employees*, *watchmen*, *maintenance men*, etc., whose work relates to the canning of both seasonal and non-seasonal commodities, no exemption may be taken.

"When an establishment is exclusively engaged in performing operations specifically mentioned in section 7(c), every employee working in such a plant either will be actually engaged in the described operations, or else will be engaged in an occupation which is a necessary incident to the described operations and working solely in a portion of the premises devoted by his employer to such operations. Therefore, when an establishment is exclusively engaged in activities enumerated in the section, all of the employees of the operator of the establishment who work solely in that establishment, including office employees, watchmen, maintenance workers and warehousemen, come within the scope of these exemptions. In such a situation, the exemptions also apply to those employees of the plant operator whose duties consist of hauling agricultural commodities from the fields or from receiving stations to the plant for packing or processing, and to those who transport to market or to carriers for transportation to market goods upon which exempt operations have been performed in the plant."

COMMENT: This paragraph affirms the prior ruling that a cannery engaged *exclusively* "in the first processing of, or in the canning of perishable or seasonal fresh fruits or vegetables" may take the 7(c) exemption for every employee working on the premises (unless, as noted above, the employee handles canned foods packed at another cannery).

The 7(c) exemptions may still be taken for *truck drivers* who haul the fresh fruits and vegetables to the cannery. In addition, the 7(c) exemption may now be taken for truck drivers who haul the canned seasonal or perishable fresh fruits and vegetables to a railroad, a distributor's warehouse or to a public warehouse. If, however, the truck driver carries the canned seasonal or perishable fresh fruits and vegetables to a so-called "consolidation" warehouse (defined in the July, 1941, release to be a warehouse which stores goods produced in more than one establishment), or to a public warehouse which is owned by the cannery, the 7(c) exemption is destroyed. Until March 1, 1944, the seasonal canned foods may be hauled during a 7(c) week to a warehouse located away from the cannery, provided that only the goods produced by that cannery are stored there.

If a truck driver hauls the canned seasonal commodities to a carrier and, in compliance with Office of Defense Transportation regulations, picks up a load of cans for packing Army rations (which is a non-seasonal commodity and therefore non-exempt), the truck driver loses the 7(c) exemption because he is not engaged in an activity which is a necessary incident to the canning of seasonal or perishable fresh fruits and vegetables. If the truck driver, however, brings a return load of supplies, for example, salt or sugar, the 7(c) exemption may be taken if the canner reasonably expects to use the supplies in the canning of seasonal or perishable fresh fruits and vegetables.

A canner may take the 7(b)(3) or 7(c) week for *maintenance employees* who dismantle and erect machinery used in the canning of seasonal fresh fruits and vegetables. If, however, the employee dismantles, moves, or sets up machinery which is to be used in packing a non-exempt commodity, the exemption will not apply.

Employees who engage in *installing new machinery*, in putting on new roofs, and in building additions to the plant, or in other similar installation and construction work, are not exempt under either the 7(b)(3) or 7(c) weeks. The clarification of January 25, 1943, however, makes it clear, that if employees are engaged in this type of work during a 7(c) week, they may be segregated and will not destroy the exemption for the remaining employees in the plant.

"On the other hand, the section 7(c) exemptions are inapplicable to any employee working in a packing or processing plant whose duties relate to goods upon which 'canning,' 'packing' or other operations described in the section have been performed in another plant. Such an employee is neither performing the operations described in the section nor is his work in relation to such goods a necessary part of the exempt operations performed in the plant where he works."

COMMENT: This section of the clarification provides the authority for denying the exemption to employees who handle canned foods packed at another plant. For example, if labeling crews during the course of a 7(c) workweek label, case or stack canned fruits and vegetables packed in another cannery, those employees lose the 7(c) exemption. The Division was fully advised of the practical difficulties raised by this ruling, particularly in view of present ODT regulations requiring a carload of 65,000 pounds, and the Food Distribution Orders requiring the warehousing of government quotas, which may necessitate the hauling of particular grades or sizes from one plant to another. The Administrator has, however, refused to amend his clarification in this respect.

"Moreover, where warehousemen, office help, or other employees work in a building which is on separate premises from that on which the packing or processing plant is located, they do not work in the place of employment where their employer engages in activities described in the section, and therefore such employees are not exempt. However, a warehouse located across the street or across a railroad right-of-way from the packing or processing establishment may be considered part of the same premises."

COMMENT: This is the portion of the release which the Administrator will not enforce until March 1, 1944, insofar as it holds that a warehouse which is not part of the cannery premises is not the "place of employment" where canning is carried on. The extension of time will apply only to warehouses which store goods produced by one cannery.

As stated above, only plant warehouses are now eligible for the 7(c) exemption, and warehouses need no longer be classified as "plant warehouses," "consolidation warehouses" and "sales warehouses" in applying the 7(c) exemption.

The 7(c) exemption may now be taken for all employees who work on the seasonal or perishable fresh fruits and vegetables in a warehouse which is located on the cannery premises or (until March 1, 1944) in a warehouse which is not a part of the cannery, provided that the only goods stored in the warehouse are those which have been canned in that cannery. If an employee at any time handles canned fruits or vegetables packed at another cannery, however, he must be disexempted.

"The purpose of section 7(c), as shown by the legislative debates, was to relieve processors and packers of seasonal agricultural commodities from the burden of paying overtime compensation during those peak seasons of the year when large fluctuating quantities of perishable agricultural commodities move from the farms to the processing establishments, which commodities must be processed as soon as they arrive. It therefore seems that the taking of the section 7(c) exemptions during the dead season is contrary to the legislative intent, and in the opinion of the Administrator these exemptions may not be taken in regard to any employee during periods of the year in which the plant is not actually engaged in operations described in the section. The Division has consistently followed this interpretation since the effective date of the Act and it was recently sustained in *Heaburg* v. *Independent Oil Mill, Inc.*, 5 Wage Hour Rept. 777 (W. D. Tenn. 1942).

COMMENT: This paragraph merely repeats the well established rule that the 7(c) unlimited exemption may be taken only during the active canning season.

"To summarize, the following general rules govern the application of the section 7(c) exemptions: If an employer does not himself carry on any of the operations specifically mentioned in section 7(c), none of his employees come within the scope of the exemptions. If he does carry on such operations, the following two groups of employees are exempt: (1) those who exclusively engage in the operations described in this section; and (2) those employees whose occupations are a necessary incident to the described operations, and who work solely in those portions of the premises devoted by their employer to the described operations. When a plant exclusively engages in activities enumerated in the section, all of the employees of the operator of the plant who work solely in that plant are exempt. On the other hand, employees whose duties relate to goods upon which the described operations have been performed in another plant and employees working in a building which is on separate premises from that on which the exempt plant is located do not fall within either of the two groups of exempt employees and hence are not exempt. An employer may take the section 7(c) exemptions only during periods in which he is actually engaged in performing operations described in the section."

COMMENT: It is apparent that the Administrator will insist that the exemption be applied on a plant basis, despite the recent ruling of the Circuit Court of Appeals for the Seventh Circuit that the Section 7(c) exemption may be applied on an individual, rather than upon a plant, basis. (*Walling* v. *Swift & Co.*, October 27, 1942, No. 7993. See INFORMATION LETTER, No. 909, November 14, 1942.)

"B. INDEPENDENT CONTRACTORS

"The following general rule can be laid down in regard to the application of the section 7(c) exemptions to employees of independent contractors: Where an independent contractor is engaged by a packer or canner or other processor of agricultural commodities to perform operations in a packing or processing establishment, the employees of the independent contractor do not come within the section 7(c) exemption unless the independent contractor actually carries on an operation which falls within the scope of the terms 'canning,' 'packing,' 'first processing,' or other operation described in section 7(c) so as to be entitled to the exemption in his own right as a canner, packer, etc. If the contractor is so engaged, the exemption is applicable (1) to those of his employees who perform the operations described in section (7c), and (2) to those of his employees whose occupations are a necessary incident to the described operations, and who work solely in those portions of the premises devoted by their employer to those operations."

COMMENT: The Administrator *formerly* took the position that the employees of independent contractors were exempt under Section 7(c) if they performed operations which would be exempt when performed by the employees of the canner or freezer himself. The Administrator has now narrowed this interpretation to require that the independent contractor himself must perform "canning," "packing," or any other exempt operation described in Section 7(c) before his employees will be entitled to the 7(c) exemption. Thus, even though a cannery is engaged exclusively in canning seasonal fresh fruits and vegetables, and the 7(c) exemption is applied to all employees of the canner in that plant, the 7(c) exemption may not be applied to employees of an independent trucking company who haul the canned fruits and vegetables to market or to a carrier. If the truck driver were an employee of the canner, he would be entitled to the 7(c) exemption.

"C. PARTICULAR OPERATIONS

"It sometimes requires careful analysis to determine whether certain activities come within the scope of the operations specifically mentioned in section 7(c). This release will deal with some of these problems which are of most common occurrence and which involve the largest number of employees.

"1. *Labeling, Stamping and Boxing of Canned Fresh Fruits and Vegetables*

"The Administrator is of the opinion that the labeling, stamping and boxing of canned fresh fruits and vegetables,

and other similar activities performed in connection with canned goods, are not 'canning . . . perishable or seasonal fresh fruits or vegetables' unless these activities follow immediately after the hermetic sealing and cooling of the cans. Where the labeling, stamping and boxing occur immediately after the hermetic sealing and cooling, the employees engaged in these activities are exempt, regardless of whether they are employed by the canner or by an independent contractor. If these operations are not performed immediately after the hermetic sealing and cooling, they are not 'canning' within the meaning of section 7(c), and if the labeling, stamping and boxing are performed by employees of an independent contractor, the employer is not thereby engaged in any of the operations described in the section and therefore none of his employees is exempt. If the labeling, stamping and boxing do not follow immediately after the sealing of the cans but are performed during the active season by employees of the canner, the workers engaged in such operations are exempt, provided that these operations are conducted in those portions of the premises devoted by their employer to canning. Where an establishment is solely engaged in the canning of fresh fruits and vegetabes, the labeling, stamping and boxing of the canned goods during the active season by employees of the canner are exempt operations if performed in the cannery or in a warehouse located on the same premises as the cannery.

"On the other hand, activities performed in a warehouse located on premises separate from the cannery are not conducted in the place of employment where the canning is done, and the exemption is inapplicable to all of the employees working in such a warehouse. Furthermore, employees working on the cannery premises who handle or work on goods canned in another cannery are not exempt."

COMMENT: The Administrator has made it clear that employees engaged in labeling, "stamping and boxing" (*i.e.* casing and stencilling) of canned fruits and vegetables immediately after the cans are sealed and cooled, are engaged in "canning" operations and are exempt if the labeling, stamping and boxing are done in the cannery proper, in a contiguous warehouse, or (until March 1, 1944) in a separate warehouse where only goods canned at that cannery are stored.

Labeling and casing operations which are not performed immediately following the sealing and cooling of the cans are not considered "canning" operations, and employees so engaged are not automatically permitted the 7(c) exemption.

"Where such labeling and casing is performed at a later date, however, employees of a canner performing that work may take the Section 7(c) exemption if those operations are performed during a workweek when the plant is engaged in the canning of fresh fruits and vegetables *and* are performed either in the cannery or a plant warehouse. For example, peas must be labeled and cased when packed, or when the cannery is running during an exempt week in the canning of some other seasonal product, such as corn or tomatoes. If done at any other time, Section 7(c) does not apply.

As stated above, if the labeling or casing operations are performed in a so-called "consolidation" warehouse, the 7(c) exemption is lost.

"4. *Manufacturing Cans, Ice and Boxes for Use in Canning and Packing Fresh Fruits and Vegetables*

"The manufacture of cans for use in canning fresh fruits and vegetables is not 'canning,' and, in the opinion of the Administrator, such manufacturing is too far removed to be considered 'a necessary part' of canning. Accordingly the manufacture of cans is not exempt, even though performed by a canner on the cannery premises solely for his use in canning fresh fruits or vegetables. For the same reasons, the manufacture of ice and of boxes and box shook for use in packing fresh fruits and vegetables is not exempt.

"Insofar as Interpretative Bulletin No. 14, the general instructions issued for the canning and packing drives of 1941, release R-1561, and any other interpretations issued by the Division are inconsistent with the opinions expressed above, the prior interpretations should be regarded as hereby superseded. However, this press release is not intended to supersede the Division's Interpretative Bulletin No. 14. That bulletin remains in effect except as it has been or may be modified by official statements of the Division."

Invalids' Food Needs Studied

A newly formed committee of physicians and specialists will assist in formulating broad policies under the rationing program for handling the special dietary needs of invalids and persons with specific diseases, the War Food Administration has announced.

The advisory committee was named by the National Research Council, at the request of the Food Distribution Administration and Office of Price Administration. The committee is studying procedure for obtaining certification by physicians of invalids and persons with specific diseases requiring extra quantities of rationed foods, qualifications of those who may certify as to these needs for extra foods, procedure of certification which will place a minimum burden on physicians, and diseases justifying extra allowances of rationed foods with specific determination of what foods and what quantities are necessary.

SWEET CHERRY CEILINGS

To Be Established at Level Allowing $40 Ton Payment to Grower

Price ceilings for the 1943 packs of canned, frozen and brined sweet cherries will be established soon at levels sufficiently over those for 1942 to permit processors to pay cherry growers an average $40 a ton increase over prevailing 1942 prices, the Office of Price Administration announced May 27.

The increase is mandatory under the terms of the amended Emergency Price Control Act of 1942, which requires that maximum prices on agricultural commodities be established so as to reflect to the grower the higher of either parity or the highest price between January 1 and September 15, 1942. In this instance, the higher is parity.

To maintain customary differentials in payments to growers, the increase is applicable to each district, variety, size and quality. The average United States grower price during the 1942 season was $136 a ton.

Vegetable Salting Articles Available in Reprint Form

Considerable interest has developed in the preservation of vegetables by salting, judging from inquiries received by the Association Laboratory. Investigations of this method of preservation have been under way for some time at the Michigan Agricultural Experiment Station, East Lansing, Michigan, conducted by F. W. Fabian and H. B. Blum, and at the North Carolina Experiment Station, Raleigh, N. C., conducted by John L. Etchells and Ivan D. Jones. Both of these groups of workers published reports on their results thus far in the April *Fruit Products Journal*. The products covered at Michigan were peas, green beans, corn, lima beans and okra; at North Carolina, green and wax beans, peas, lima beans, carrots, and some leafy vegetables.

The Laboratory has obtained a supply of reprints of both articles, "Preserving Vegetables by Salting," by Fabian and Blum, and "Commercial Brine Preservation of Vegetables" by Etchells and Jones, and will send copies to members requesting them.